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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,398	03/14/2001	Wolfgang Ludwig	71836-012	3668

7590

09/24/2004

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/808,398

Applicant(s)

LUDWIG, WOLFGANG

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11 and 17-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11 and 17-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. The request filed on September 3, 2004 for an RCE based on parent Application No. 09/808,398 is acceptable and an RCE has been established. An action on the RCE follows.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 29 and 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Gould [Pat. No. 4,994,294].

Gould teaches an apparatus comprising a vessel (Figure 1, #10), means for selectively heating and cooling (column 6, lines 35-59). Phrases such as "for receiving and agitating bodies of meat" are merely preferred methods of using the claimed apparatus.

4. Claims 21, 29, and 33 are rejected under 35 U.S.C. 102(e) as being anticipated by Bellue Jr [Pat. No. 6,145,432].

Bellue Jr teaches an apparatus comprising a vessel (Figure 1, #2), means for selectively heating and cooling (column 3, lines 32-43), and a jacket (Figure 1, #6). Phrases such as "for receiving and agitating bodies of meat" are merely preferred methods of using the claimed apparatus.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr as applied above, in view of Burkhart [Pat. No. 4,120,981].

Bellue Jr teaches the above mentioned components as well as temperature sensor (Figure 1, #9). Bellue Jr does not recite the temperature sensor being connected to the means for selectively heating and cooling. Burkhart teaches a meat processing device comprising a vessel with a wall (Figure 5, #18), a temperature sensor extending through the wall and thermally insulated (Figure 5, #54), and heaters controlled via the output of the temperature sensor (Figure 5, #49). It would have been obvious to one of ordinary skill in the art to incorporate the temperature control means of Burkhart into the invention of Bellue Jr since both are directed to meat processing devices, since Bellue Jr already included circulation of heating and cooling fluids (column 3, lines 32-43) as well as a temperature sensor (Figure 1, #9), and since the temperature controller of

Burkhart would have provided an efficient means for automatically controlling the temperature within the device of Bellue Jr without the need for manual input.

7. Claims 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr, in view of Burkhart, as applied above, and further in view of DE 3119496A. Bellue Jr and Burkhart teach the above mentioned components. Bellue Jr and Burkhart do not recite the temperature sensor having a thrust member with plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and which has plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of Bellue Jr, in view of Burkhart, since all are directed to meat processing devices, since Bellue Jr already included heating and cooling means as well as a temperature sensor (column 3, lines 32-43), since Burkhart already included a temperature sensor within the device (Figure 5, #54), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its multiple temperature values at different depths.

8. Claims 26, 30, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr as applied above, in view of Ludwig [Pat. No. 5,405,630]. Bellue Jr teaches the above mentioned components as well as a jacket (Figure 1, #6) and heaters (Figure 1, #12). Bellue Jr does not recite a refrigeration unit and rotary paddle. Ludwig teaches a meat massager comprising a refrigeration unit (Figure 4, #22) and rotary paddle (Figure 4, #23). It would have been obvious to one of ordinary skill in

the art to incorporate the refrigeration unit of Ludwig into the invention of Bellue Jr since both are directed to meat massagers, since Bellue Jr already included a cooling fluid (column 3, lines 32-43) but simply did not state how the fluid was cooled, and since refrigeration units were commonly used to cool fluids for meat massagers as shown by Ludwig (Figure 4, #22). It would have been obvious to one of ordinary skill in the art to incorporate the torque controlled paddles of Ludwig into the invention of Bellue Jr since both are directed to meat massaging devices, since Bellue Jr already included means for rotating the drum (Figure 1, #20), since the paddles of Ludwig would have provided a more effective tumbling action, as compared to the smooth drum of Bellue Jr, and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

9. Claims 17-19, 27-28, 31-32, and 35-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr, in view of Ludwig, as applied above, and further in view of Burkhart.

Bellue Jr and Ludwig teach the above mentioned components. Bellue Jr also teaches a jacket (Figure 1, #6) and drum (Figure 1, #8). Ludwig also teaches controlling the torque of rotary paddles (Figure 4, #30-31). Bellue Jr and Ludwig do not recite the temperature sensor being connected to the means for selectively heating and cooling. Burkhart teaches a meat processing device comprising a vessel with a wall (Figure 5, #18), a temperature sensor extending through the wall and thermally insulated (Figure 5, #54), and heaters controlled via the output of the temperature sensor (Figure 5, #49). It would have been obvious to one of ordinary skill in the art to incorporate the temperature

control means of Burkhart into the invention of Bellue Jr, in view of Ludwig, since all are directed to meat processing devices, since Bellue Jr already included circulation of heating and cooling fluids (column 3, lines 32-43) as well as a temperature sensor (Figure 1, #9), and since the temperature controller of Burkhart would have provided an efficient means for automatically controlling the temperature within the device of Bellue Jr without the need for manual input. It would have been obvious to one of ordinary skill in the art to incorporate the torque controlled paddles of Ludwig into the invention of Bellue Jr since both are directed to meat massaging devices, since Bellue Jr already included means for rotating the drum (Figure 1, #20), since the paddles of Ludwig would have provided a more effective tumbling action, as compared to the smooth drum of Bellue Jr, and since Ludwig teaches that torque control provided improved water bonding without damage to the muscle tissue (abstract).

10. Claims 11 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bellue Jr, in view of Ludwig and Burkhart, as applied above, and further in view of DE 3119496A.

Bellue Jr, Ludwig, and Burkhart teach the above mentioned components. Bellue Jr, Ludwig, and Burkhart do not recite the temperature sensor having a thrust member with plural sensing regions along its length. DE 3119496A teaches an apparatus comprising a temperature probe which is thrust into a meat product (Figure 2, #1-2) and which has plural sensing regions along its length (Figure 3, #I-IV). It would have been obvious to one of ordinary skill in the art to incorporate the temperature probe of DE 3119496A into the invention of Bellue Jr, in view of Ludwig and Burkhart, since all are directed to meat

processing devices, since Bellue Jr already included heating and cooling means as well as a temperature sensor (column 3, lines 32-43), since Burkhart already included a temperature sensor within the device (Figure 5, #54), and since the temperature probe of DE 3119496A would have provided a more accurate heating, or cooling, profile due to its multiple temperature values at different depths.

Response to Arguments

11. Applicant's arguments with respect to claims 11 and 17-36 have been considered but are moot in view of the new ground(s) of rejection.

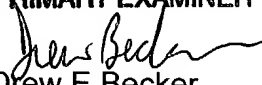
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Thur. 8am-5pm and every other Fri. 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DREW BECKER
PRIMARY EXAMINER


Drew E Becker
Primary Examiner
Art Unit 1761

9-21-04